

**Finance Potpourri –
TIFs, Refundings &
Equipment Lease-Purchase**

MISSISSIPPI MUNICIPAL ATTORNEYS' ASSOCIATION
Winter Conference
January 10, 2024

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**Tax Increment
Financing**

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Tax Increment Financing ("TIF")

- What is a TIF? Mechanism to finance infrastructure improvements by capturing the increase in taxes from a project.
- Statutory Authority: § 21-45-1 et seq. of MS Code of 1972, as amended
- Economic Development Incentive: encourage private companies to develop economic development projects within areas designated for redevelopment.
- Eligible Expenditures: infrastructure improvements (i.e., roads, utilities, drainage, parking)

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TIF Process

- Redevelopment Plan: plan for the acquisition, clearance, reconstruction or future use of a redevelopment project area.
- TIF Plan: specific to a particular project. Must include:
 - Objectives
 - Need and proposed use in relationship to Redevelopment Plan
 - Project cost estimates, sources of revenue and amount of financing
 - List of real property
 - Duration
 - Estimated impact on revenues of taxing jurisdictions
 - Separate fund to receive ad valorem taxes and other financial assistance
- Planning Commission: review redevelopment plan prior to adoption and determine in conformity with existing general plan.
- Public Hearing: city (and county) must hold public hearings on Redevelopment Plan and TIF Plan prior to adoption.

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TIF Process (cont.)

- Agreements:
 - Development and Reimbursement Agreement
 - Interlocal Agreement (if applicable)
- TIF Bonds:
 - Competitive or negotiated/private sale
 - Maximum term of 30 years
 - Limited obligations secured by additional ad valorem taxes and/or sales tax of the project
 - Bond sizing based on percentage of "captured value"
- Advantages:
 - TIF Bonds not subject to statutory debt limits
 - No tax increase
 - Not subject to protest
- Disadvantages:
 - Higher interest rate than GO bonds
 - Reduced tax revenue

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**Refundings/
Refinancing**

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Mississippi Bond Refinancing Act (§31-27-1 et seq.)

- "Bond" means every instrument evidencing an obligation for the payment or repayment of money (i.e., bonds, notes, leases, certificates of participation)
- Security: same source of security as the bonds to be refunded or such other security that may be lawfully pledged.
- Savings Requirement: net present value savings of at least 2% of the principal amount of bonds being refunded
- Method of Sale: competitive or negotiated

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General Refunding Law of 1934 (§31-15-1 et seq.)

- May issue bonds for the purpose of refunding any bonded indebtedness, regardless of statutory debt limit.
- May be issued whenever funds available from taxes are not sufficient to pay outstanding bonds.
- Security: special tax levy; full faith and credit.
 - Exception for Revenue Bonds: secured by same source of revenue as bonds being refunded
- Savings Requirement: none
- Method of Sale: competitive or negotiated

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Considerations

- Objective:
 - Achieve debt service savings
 - Remove burdensome bond covenants
 - Restructure payment schedule
- Call Date: optional prepayment date
 - Current refunding: within 90 days
 - Advance refunding: more than 90 days
 - Taxable bonds
 - Forward delivery bonds
 - Cinderella bonds
- Savings Threshold
 - Current vs. Advance refunding
 - Negative arbitrage
- Savings Structure
 - Level, accelerated or deferred



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Equipment Lease-
Purchase

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Equipment Lease-Purchase Authorization (§31-7-13(e))

- "Equipment" includes automobiles, trucks, tractors, office appliances, furniture, associated software, and all other equipment of every kind and description.
- Lease-purchase financing may be obtained from the vendor or a third-party after soliciting and obtaining two written competitive bids.
- Competitive written bid: a bid submitted on a bid form furnished by the governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.
- Competitive: bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids.

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Authorization (cont.)

- Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of the equipment or, when bids not required for purchase, at any time before the purchase of the equipment.
- Term of the financing cannot exceed useful life of equipment.
- Subject to annual appropriation: "The continuation of this Agreement is contingent in whole or in part upon the appropriation of funds by the [Board] to make the lease-purchase payments required under this Agreement. If the [Board] fails to appropriate sufficient funds to provide for the continuation of the lease-purchase payments under this Agreement, then the obligations of the Lessee to make such lease-purchase payments shall terminate on the last day of the fiscal year for which appropriations were made."

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Prohibited Contract Provisions

- MS AG Op., Chamberlin (October 18, 2002)
 - Waiver of jury trial
 - Binding arbitration
 - Waive damages (consequential, special or punitive)
 - Limit amount of damages (to amount of contract)
 - Limit rights to cancel, reduce or setoff
 - Indemnification
 - Waive rights and remedies conferred upon a lessee per Article 2(a) of UCC
 - Limit warranty of merchantability or any other common law warranty
- MS AG Op., Nowak (January 23, 2009)
 - Pay attorneys' fees to non-breaching party
- MS AG Op., Davis (March 3, 1993)
 - Limit liability for negligence

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QUESTIONS?

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